

## **EXHIBIT 1**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
LEVEL 3 COMMUNICATIONS, LLC	)	
	)	WC Docket No. 09-153
Petition for Declaratory Ruling that	)	
Right-of-Way Rents Imposed by the New	)	
York State Thruway Authority Are	)	
Preempted Under Section 253	)	

**SECOND SUPPLEMENTAL DECLARATION OF STEVE GORDON IN SUPPORT OF  
PETITION FOR DECLARATORY RULING THAT RIGHT-OF-WAY RENTS  
IMPOSED BY THE NEW YORK STATE THRUWAY AUTHORITY ARE PREEMPTED  
UNDER SECTION 253**

I, Steve Gordon, declare under penalty of perjury as follows:

1. This is a second supplement to my initial Declarations, which have been included in the record respecting the Petition for Declaratory Ruling that Right-of-Way Rents Imposed by the New York State Thruway Authority Are Preempted Under Section 253 filed by Level 3 Communications, LLC ("Level 3"). I still hold the title of Senior Director of Network Infrastructure Services within Level 3's Planning and Deployment organization.
  
2. I am familiar with the practices employed by various state and local governments respecting the development and imposition of various regimes for charging compensation for the use of public rights-of-way. In my 12 years of experience in obtaining franchise and right-of-way arrangements with state and local governments, I have often encountered situations where the compensation methodology or amount imposed by one government entity is similar or identical to the compensation methodology or amount imposed by other governmental entities within the same region. This suggests to me that there is either coordination between the governmental entities with respect to their compensation practices for telecommunications franchises, or that there is a "domino effect" where state and local governments within the region become aware of another government's franchise or right-of-way compensation regime and elect to either copy the regime entirely, or model their compensation regime on the other governments' regimes. These events usually occur as state and local governments are looking to adjust their franchise fee or rent requirements, or are enacting a franchise fee or ordinance covering the placement of telecommunications facilities for the first time. Other than changes that have been mandated by state law, I don't recall any state or local government agency that has implemented a change to its compensation regime that had the effect of *lowering* the compensation due from telecommunications providers. As a result, the "group pricing" practices that I have described above, when enacted by neighboring entities, tend to move overall

telecommunications franchise fees and rents upward to the highest price charged by a state or local government within the region.

3. The WiTel negotiation with NYSTA is an example of such communication and coordination between different state and local government entities. The law firm that represented NYSTA in connection with the negotiations of the Riders is the same law firm that, at or about the same time, was involved in contentious negotiations with Level 3 and other communications companies regarding the use of rights-of-way along controlled access freeways located in the state of Massachusetts.

Dated this 8<sup>th</sup> day of March 2010:

  
Steve Gordon